IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 870 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereundeJJ : NO

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5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

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CARRYCO

Versus

NEW INDIA ASSURANCE CO LTD

Appearance:

MR ARUN H MEHTA for the Appellant
MR PV NANAVATY Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 11/08/2000

ORAL JUDGEMENT

Being aggrieved by the dismissal of Civil Suit No. 3069/74 by a judgment dated 24/25 April 1980 by the City Civil Court, Ahmedabad, the appellant-original defendant has approached this court.

2 The facts giving rise to the said civil suit are as under:

2.1 For the sake of convenience, the parties to the litigation have been described as arrayed before the trial court. Plaintiff No. 1 is an insurance company whereas plaintiff No. 2 is in the business of manufacturing and selling cloth at Ahmedabad and the defendant firm is doing business of transportation of goods. Plaintiff No. 2 had delivered 7 bales of textile material to the defendant at Ahmedabad for the purpose of transportation of the same to Calcutta. The defendant firm had accepted the said assignment and had agreed to deliver the said bales at Calcutta in a truck owned by the defendant. The case of the plaintiffs in the suit was that the goods were not delivered at Calcutta and as the defendant had failed to deliver the goods at the destination, the defendant had informed plaintiff No. 2 with regard to its failure. In the circumstances, plaintiff No. 2 had given notice to the defendant dated 24.4.73 and had claimed a sum of Rs. 16,374.49 by way of damages on account of non-delivery of the said 7 bales of textile goods. The defendant admitted the fact that the goods were not delivered, but did not make payment of damages to plaintiff No. 2. Plaintiff No. 1 is an insurer of the goods, who had ultimately paid the sum assured to plaintiff No. 2 and in pursuance of the contract of insurance, plaintiff No. 1 was subrogated to all the rights and remedies of plaintiff No. 2 and therefore plaintiff No. 1 as an insurer and plaintiff No. 2 as the owner of the goods had filed the suit for recovery of the loss suffered by plaintiff No. 2. It is not in dispute that plaintiff No. 1-the insurance company had already made payment of the amount of damages to plaintiff No. 2.

2.2 The defendant filed its written statement at Exh. 16 raising several technical pleas with regard to improper verification of the plaint, incomplete vakalatnama, etc. It was also pleaded by the defendant that the plaintiffs had not produced certain relevant material to substantiate the claim and they were to rely upon certain inadmissible evidence. Upon perusal of the pleadings, issues were framed at Exh. 31.

2.3 On behalf of the plaintiffs, Shri Sureshchandra Chimanlal Shah (Exh.35), Shri Bhupendra Harilal Mehta (Exh. 89), and Kiritbhai Biharilal Shah (Exh. 94) were examined whereas the defendant had examined Shri Ramchandra Hiralal Gupta (Exh. 118). an employee of the defendant firm. After considering the evidence adduced before the court and upon hearing the learned advocates, the trial court came to the conclusion that the plaintiffs had a right to file a suit for damages, but as the goods in respect of which claim was made by plaintiff No. 2 were duly insured by plaintiff No. 1 by a policy which was taken by plaintiff No. 2 and the defendant, plaintiff No. 2 had a right to recover the amount of damages from plaintiff No. 1, the insurance company. Thus, plaintiff No. 2 had a right to recover the amount of loss from the defendant as the defendant had not transported the bales in question to Calcutta, but plaintiff No. 2 had also a right to recover the amount of damages from plaintiff No. 1 in pursuance of the insurance policy taken by plaintiff No. 2 firm.

3. Looking to the facts of the case, the trial court came to a conclusion that as plaintiff No. 1 had already made payment to plaintiff No. 2 in respect of damage suffered by plaintiff No. 2, it would be futile to pass a decree in favour of plaintiff No. 2. Moreover, as plaintiff No. 1 was the insurer who had entered into a contract of insurance in respect of the goods in question with plaintiff No. 1 and the defendant, it would be futile to direct the defendant to make the payment as plaintiff No. 1, as an insurance company had already made the payment to plaintiff No. 1.

4. The trial court rightly came to the above conclusion because even if the defendant was made liable to make payment of damages to plaintiff No. 2, the defendant would have been constrained to file a suit against plaintiff No. 1 for recovering the amount of damages from plaintiff No. 1 as plaintiff No. 1 had insured the goods in question.

5. Learned advocate Shri A.H. Mehta appearing for the original defendant has submitted in this appeal that the learned Judge of the trial court had not appreciated the evidence adduced before the court properly. It has been also submitted by him that the impugned order of dismissal is not just and proper.

6. Upon hearing learned advocate Shri Mehta, I do not find any substance in the arguments advanced by him for the reason that, by virtue of the dismissal of the

suit, no harm had been caused to the defendant as the claim made by the plaintiffs, namely, the insurance company and the owner of the goods had been dismissed. By virtue of the said dismissal, on the contrary, the defendant was put in an advantageous position for the reason that it was not made liable to make any payment of damages to plaintiff No. 2. Otherwise, the defendant would have been constrained to make payment of damages to plaintiff No. 2 and thereafter he would have filed a suit against plaintiff No. 1, who had insured the goods. In the circumstances, instead of decreeing the suit, the trial court rightly dismissed the suit in the interest of all the parties.

7. I do not see any illegality committed by the trial court and therefore, in my opinion, it would not be proper to interfere with the just and proper findings arrived at by the trial court and therefore this appeal is dismissed with no order as to costs.

(A.R. Dave, J.)
(hn)